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**JOINT REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES**

**PROPOSED ORDINANCE RESTRICTING
OUTDOOR ALCOHOL ADVERTISING**

INTRODUCTION

At the Public Safety and Neighborhood Services Committee meeting of February 23, 2000, the Committee directed the City Attorney to prepare an ordinance for the consideration of the Committee that would restrict advertising of alcoholic beverages on billboards within 1000 feet of any school, playground, recreation center or facility, child care center, arcade, or library. The Committee directed the Manager to inventory all existing billboards and determine the number of billboards that would be affected by the proposed ordinance, and the number that would be left available for advertising. The Committee further directed the City Manager and City Attorney to hold public meetings on the proposed ordinance to collect information from the community regarding existing youth alcohol consumption, diversion, and intervention efforts and the effect of billboard advertising on those efforts.

This Report reviews the testimony received at the public hearings, the results of the billboard inventory, and the status of the ongoing litigation in Los Angeles and Oakland regarding their alcohol advertising ordinances. This Report also examines research and other information relating to alcohol advertising on billboards and youth drinking and reviews that information in light of recent court cases discussing the evidence needed to support a restriction on speech that is protected by the First Amendment. Appendix A to this Report is a draft of the ordinance requested by the Committee, restricting alcohol advertising on billboards within one thousand feet of schools, playgrounds, recreation centers or facilities, child care centers, arcades, or libraries. Appendix B is a list of citations supporting the findings in the ordinance.

DISCUSSION

I. Evidence Relevant to Restricting the Outdoor Advertising of Alcoholic Beverages

As was discussed in the February 18, 2000, Joint Report to this Committee, recent court decisions emphasize the importance of gathering and analyzing reliable evidence showing (1) the need for restrictions on alcohol advertising in San Diego, (2) the kind of restrictions needed, and (3) the efforts that have been undertaken by the community in general and the City in particular to discourage underage drinking. The information gathered should include anecdotal and research evidence regarding the impact of outdoor alcohol advertising on youth and safety, reports on the existence and effectiveness of programs designed to combat underage drinking, reports on the enforcement and effectiveness of existing laws prohibiting the purchase, sale, and possession of alcoholic beverages, and an examination of other efforts that could be made by the City to decrease underage drinking. Information in each of the categories listed above has been obtained through the public hearings held at the direction of the Committee and from research and articles obtained from the community and by the City Attorney.

A. Public Hearings

The City Manager scheduled and noticed six public hearings regarding the proposed outdoor alcohol advertising ordinance. The hearings were held in libraries and community centers in the neighborhoods of Pacific Beach, La Jolla, Linda Vista, Oak Park, City Heights, and Rancho Penasquitos in April and May. Professionals and experts from the prevention, health, business, and law enforcement communities were invited and scheduled to speak at each hearing. After the scheduled speakers, attendees were invited to comment and to submit written comments and materials.

The speakers were asked to focus on the need for the proposed restrictions and, specifically, the efforts currently being made in the City of San Diego to curb youth drinking, the effectiveness of those efforts, and whether and how restricting outdoor advertising of alcoholic beverages will aid in those efforts. Speakers included representatives of retail merchants, restaurants, and the beer industry, youth counselors, prevention and health advocates, academics, researchers, and members of law enforcement. A list of the speakers and their affiliations is attached as Appendix C.

1. Current Programs in San Diego Aimed at Youth Drinking

Many of the speakers described programs currently operating in San Diego to reduce youth drinking and enforce existing laws. Several of these programs are conducted by the San Diego Police Department and participated in by bar and restaurant owners or members of the community. Others are conducted by community organizations for students or by business organizations to assist and educate members.

Law Enforcement Programs:

- Minor Decoy Operation where minors attempt to buy alcohol;
- Cops In Shops program where an officer poses as a store employee to monitor attempts by minors to illegally purchase alcohol;
- ABC/ID Card training for retail, bar, and restaurant employees to learn to detect fake IDs and comply with ABC laws;
- Zero Tolerance for Alcohol presentations to high schools;
- Informed Merchants Preventing Alcohol-related Crime Tendencies (IMPACT) provides courtesy inspections to educate businesses and allow businesses to correct violations before sanctions are imposed;
- Shoulder Tap, a program where a minor decoy in front of a store asks adults if they will purchase alcohol for them;
- Operation Trapdoor, a multi-agency program that targets minors using false identification;
- Operation Safe Crossing, a multi-agency task force that prevents juveniles from entering Mexico during peak holiday periods and checks people reentering the United States who have been drinking;
- Community Outreach;
- The Juvenile Services Team, including School Task Force Officers, DARE Officers, and Juvenile Investigators, provides training, coordination, early intervention, and graduated consequences for repeat offenders;
- Complaint tracking, targeting businesses who have sold alcohol to minors and juveniles; and
- Enforcement of youth drinking laws as part of regular enforcement activities.

According to the San Diego Police Department's Fourth Quarter/Final Report on its ABC GALE Grant for the period of July 1, 1999 through June 30, 2000, the Department visited 374 businesses as part of the Minor Decoy operation. Over twenty percent of the businesses visited sold alcohol to decoys. The Department followed up with IMPACT inspections and training for

those businesses that sold to a minor. A total of 1687 persons attended the ABC/ID training during the grant year. A total of 267 businesses were inspected.

The Department visited 154 businesses and made 68 arrests as part of the Cops In Shops operation. For the Shoulder Tap operation, 37 adults were approached and 5 arrests made.

The Department presented Zero Tolerance for Alcohol education classes to 3869 students, about 80 percent of high school seniors enrolled in City schools.

The Department trained 441 police officers in detecting fake IDs, the elements of the various ABC violations, and investigative techniques for the different violations. The GALE grant detectives investigate cases involving the use of fake or borrowed ID for prosecution.

In addition to the efforts outlined above, the San Diego Police Department has worked during the past year to develop a database that tracks complaints related to sales of alcohol to minors and enables the Department to follow-up more effectively on those complaints, including notice letters, site visits, inspections, and Minor Decoy Operation visits. The Department received 100 complaints last year. The Department developed a database to track inspections. The Department has worked with the City Attorney and ABC investigators to ensure timely investigations and sanctions.

Community Programs:

- The Every Fifteen Minutes program teaching drunk driving awareness to high school students;
- Safe and Sober Graduation and Prom Media Events programs sponsored by the Responsible Hospitality Coalition;
- Home party interventions;
- Keg tagging;
- After hours programs such as the Critical Hours Program, Six to Six, Club Live, Youth Summit, Youth to Youth Congress, Safe Nights, dances and other alcohol-free events;
- Anheuser-Busch's Family Talk About Drinking Program brochure and video; and
- Education activities on college and university campuses.

The "Every Fifteen Minutes" Program was presented to over 800 students and faculty members at Kearny High School Students on May 18 and 19, 2000, through the combined efforts of the San Diego Police Department, student volunteers, community groups, and other agencies.

Business Education Programs:

- The Responsible Alcohol Beverage Server (RABS) training and TIPS training;
- Identification Quality Control program using youthful looking twenty-one year olds to monitor ID checking compliance;
- The use of electronic age verification units to read the magnetic stripe and detect a fake ID;
- Training for security guards through the Public Safety Training Association;
- Regular articles in the newsletter of the San Diego Merchants Association for the education of members;
- Educational forums for store owners by the ABC and law enforcement agencies;
- Training for nightclub employees through Nightclub Security Consultants;
- Responsible Hospitality Coalition working to ensure that clerks, bartenders, and servers practice responsible beverage sales;
- Anheuser-Busch's Kids Training for responsible serving techniques; and
- Industry-sponsored advertising of designated driver and responsible drinking campaigns.

Members of the business, health, and law enforcement communities have contributed significant time and resources, in many cases working together, to bring these programs to the community. Even so, health and prevention specialists contend that youth drinking continues to be a problem. Judy Strange of the San Dieguito Alliance for Drug Free Youth cited their recent Healthy Kids Survey that showed that 22% of high school students in that area reported participating in binge drinking (five or more drinks) at least once in the previous thirty days. Dan Tomskey stated that more than half of high school students are drinking. Jennifer Schimke of the Youth Substance Abuse Momentum Team stated that California leads the nation in underage drinking. Some speakers pointed to studies showing that parental example and influence is the number one indicator for youth drinking; others looked to the bigger picture of social norms, how they are created, and how they can be changed.

2. Advertising Restrictions as a Piece of the Prevention Puzzle

Members of the health and prevention communities view restrictions on outdoor advertising as the missing piece to the prevention puzzle that should be implemented along with existing programs to enhance the impact of those programs and change an environment that currently supports drinking. As stated by Judy Strange of the San Dieguito Alliance for Drug Free Youth, “young people take their cues from the environment in which they live.” Billboards are a part of that environment and “part of the portrayal of the norms of the use of alcohol by young people” at a time when young people “are desperately trying to find what the norms are for alcohol, tobacco, and drug use.” Ray DiCiccio of the San Diego State Foundation also cited the need to change the culture surrounding alcohol using a comprehensive approach that includes billboard restrictions.

Dan Tomskey of the Institute for Health Advocacy presented a chart listing the “Prevention Strategy” for youth drinking related problems in San Diego. One of the eight strategies listed is restricting outdoor alcohol advertising in youth frequented areas. Mr. Tomskey testified that restrictions on outdoor advertising was the only part of the strategy that had not been implemented. Mr. Tomskey also addressed the connection between advertising and youth drinking. Mr. Tomskey stated that studies show that advertising is effective in increasing awareness of a product and brand recognition, and that children who are more aware of beer advertising have more favorable beliefs about drinking.

Judy Walsh-Jackson of the Combating Underaged Drinking Initiative spoke of the importance of pursuing not one but multiple strategies to achieve a “synergistic effect” that is greater than the effect of a single strategy. Dana Stevens of the Safety Wellness Advocacy Coalition concurred that the approach to underage drinking must be multi-faceted and include changes to the environment that young people live in because prevention programs “can’t compete with the \$78,000,000 the alcohol industry spends on outdoor advertising alone.”

Lanny Roark of the San Diego County Law Enforcement Task Force on Underage Drinking called youth access to alcohol a community problem that cannot be solved by law enforcement alone. Rather, the issue requires a multi-faceted approach that includes addressing the issue of outdoor alcohol advertising.

Dr. Cleo Malone of the Palavra Tree discussed the “horrendous impact” of billboards that promote alcohol in “under-served communities.” Dr. Malone cited statistics for 1998 of \$2.2 billion spent on advertising alcoholic beverages, of which 20% was spent on billboards. Dr. Malone also stated that 77% of Americans believe that advertising for alcoholic beverages should be made less appealing to children.

Jill Galante of the San Diego Coalition for Responsible Outdoor Advertising spoke of alcohol advertising as not only advertising a product but a lifestyle that youth would want to mimic. Ms. Galante stated that peer pressure among youth is influenced by advertising.

3. Advertising Restrictions as an Unnecessary Infringement on the Marketing of a Legal Product

Members of the business community questioned the connection between restricting advertising and reducing youth drinking. As Steven Zolezzi of the San Diego Food & Beverage Association pointed out, several studies show that a young person's decisions regarding alcohol are primarily influenced by his or her parents or peers. Consequently, the proposed ordinance "would restrict truthful and non-misleading advertising of licensed beverage products while failing to advance the objective of reducing illegal underage drinking." Likewise, Andrew Baldonado of Anheuser-Busch cited the Roper Youth Report showing that 70% of teens aged 13 to 17 identified their parents as the leading influence in their decisions about drinking while only 6% identified advertising as an influence.

Arkan Somo of the San Diego Merchants Association spoke of the infringement on the ability of retailers to advertise products that they sell. Mr. Somo described the many efforts of his Association to reduce youth access and drinking and questioned the connection between restricting advertising and reducing youth drinking. Andrew Baldonado of Anheuser-Busch described the different layers of existing government regulation that was found by the Federal Trade Commission to be "realistic, responsive, and responsible to the many issues raised by underage drinking." Mr. Baldonado further described advertising as a key tool for selling beer to adults and a "necessary part of the marketing mix to ensure that consumers have the information they need to choose our brands over those of our competitors." Mr. Baldonado stated that studies show that advertising influences an adult's choice of brand and does not increase overall consumption.

4. Anecdotal Evidence

A number of speakers discussed their experiences with their own children or children they work with and alcohol. Roy Vandergriff of the North City Prevention Coalition described an informal survey that she conducted among a group of adolescents recovering from drug and alcohol use. The adolescents indicated their beliefs that the people in the ads are rich, the girls are pretty, and the ads made them curious about what it would be like to drink. Judy Walsh-Jackson stated that in her experience, although problems in the home were often a factor leading to drug and alcohol abuse, alcohol advertising was often a trigger for a relapse.

Jill Galante discussed her experience as a graduate student and therapist working with teens trying to cope with substance abuse problems while living in an environment where alcohol is promoted. Ms. Galante quoted one fourteen-year old patient as saying, "I have liquor stores on

every corner and you are telling me that the community wants me to do something besides drink?" Dan Tomskey also mentioned the difficult position parents are put in when trying to counter continuous advertising. Dr. Malone discussed the models used in alcohol advertising that "dress like children." "We don't see many 40-year old folks with baggie pants and hip-hop looks unless you are trying to sell it to our young people."

Jennifer Schimke displayed a diagram showing that on the night of the public hearing at the City Heights Library, four billboards within view of the library, and near an elementary school and a Head Start program carried ads for alcoholic beverages (J&B, Crown Royale, and Corona). Dan Tomskey also spoke of the concentration of billboards in the Mid-City area and the affect they have on a neighborhood struggling with crime and seeking improvement. Mr. Tomskey described the "Body Shots" billboard for tequila posted in an area "inundated with alcohol-related crime."

B. Research And Articles

Many of the speakers at the public hearings cited or submitted research regarding the effects of alcohol or alcohol advertising. The City Attorneys' Office has gathered many of these and other research studies and articles, as listed in Appendix E. These materials are available for review by Council members.

1. Studies Establishing Youth Drinking as a Problem.

In addition to the testimony received at the public hearings, many studies set forth statistics relating the numbers and ages of youth drinkers in the United States (see articles listed in Appendix D.) The Department of Health and Human Services' 1998 National Household Survey on Drug Abuse reviewed the frequency and extent of underage drinking. The report uses three classifications of drinker: (1) current use is defined as at least one drink in the past month; (2) binge use is defined as five or more drinks on the same occasion at least once in the past month; and (3) heavy use is defined as five or more drinks on the same occasion on at least five different days in the past month. The summary of the Department's findings includes:

. . . The level of alcohol use was strongly associated with illicit drug use in 1998, as in prior years. Of the 12.4 million heavy drinkers [age 12 and older], 29.5 percent (3.7 million people) were current illicit drug users. Other drinkers had a rate of 5.5 percent for illicit drug use, while only 1.7 percent of nondrinkers were illicit drug users.

About 10.4 million current drinkers were age 12 to 20 years old in 1998. Of these, 5.1 million were binge drinkers, including 2.3 million heavy drinkers.

The rates of current, binge and heavy alcohol use among the population age 12 to 20 years did not change significantly between 1994 and 1998. Rates in 1998 were 30.6 percent, 15.2 percent, and 6.9 percent, respectively, for current, binge, and heavy use. . . .

Young adults age 18 to 25 years old were the most likely to binge or drink heavily. Among those age 18 to 25 who had at least one drink in the past month, about 54 percent were binge drinkers and nearly one in four were heavy drinkers.

Among youths age 12 to 17, the rate of current alcohol use was about fifty percent in 1979, fell to about twenty-one percent in 1992, and has remained relatively stable since then. Rates of binge and heavy alcohol use in this age group have also remained relatively stable since 1994.

The rates of binge and heavy alcohol use among young adults ages 18 to 25 were significantly higher in 1998 than in 1997, but similar in 1998 to the rates observed in 1996. Binge rates were 32.0 percent, 28.0 percent, and 31.7 percent in 1996, 1997, and 1998, respectively. Similarly, heavy drinking rates were 12.9, 11.1, and 13.8 percent in those three years.

Other studies are summarized in this excerpt from the 1999 report by Drug Strategies, *Millennium Hangover: Keeping Score on Alcohol* (footnotes omitted):

Many youth begin drinking at early ages, putting themselves at great risk for alcohol problems later in life. Almost one-third of teenagers report having had their first drink (more than a few sips) before their 13th birthday. According to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), youth who drink before age 15 are four times more likely to develop alcohol dependence than those who begin drinking at age 21. For each year's delay in initiation of drinking, the likelihood of later alcohol abuse problems decreases markedly.

Girls are drinking at earlier ages. According to the National Household Survey on Drug Abuse, in 1995, 31 percent of girls used alcohol for the first time between the ages of 10-14, compared to 7 percent in 1965.

Youth who drink alcohol participate in other risky behaviors more often than those who abstain. According to the American Academy of Pediatrics, the more youth drink, the more likely they are to drink and drive, or ride in a car where the driver has been drinking. In addition, alcohol can impair adolescents' judgments about sex and contraception, placing them at increased risk for HIV infection, other sexually transmitted diseases and unplanned pregnancy.

Young drinkers use tobacco and other drugs more often than non-drinkers. The 1998 National Household Survey on Drug Abuse found that one in three youth aged 12 to 17 who used alcohol in the preceding month also used illicit drugs, compared to only one in 34 non-drinkers. Rates of illicit drug use continue to increase as the quantity of drinking rises. For example, among youth who binged in the past month (five or more drinks at a time), half also used illicit drugs; among youth who binged at least five times in the past month, two-thirds also used illicit drugs.

According to the *California Biennial Student Survey for 1995-1996* (Cal. State Dept. Of Alcohol and Drug Programs), over forty percent of California's eleventh graders have been very drunk or sick on alcohol, and over twenty-five percent like to drink until they are really drunk.

2. Studies Showing a Link Between Outdoor Advertising and Increased Consumption of Alcohol

The most frequently cited study stating that a relationship exists between increased consumption and advertising is "Studying the Effects of Alcohol Advertising on Consumption" by Henry Saffer, *Alcohol Health and Research World* 20:266 (Fall 1996). Saffer used an econometric approach to show that restrictions on advertising plus increased counter-advertising would reduce the levels of alcohol abuse. Although less effective, Saffer concluded that limiting alcoholic beverage advertising alone, without an accompanying counter-advertising campaign, may also decrease alcohol abuse.

A more recent study found that adolescents who drink, or who intend to drink at a future time, find image advertisements for alcohol more appealing than product advertisements. Image advertising is advertising that focuses on the lifestyle of the user rather than the intrinsic value of the product. Kathleen J. Kelly & Ruth W. Edwards, "Image Advertisement for Alcohol Products: Is Their Appeal Associated with Adolescents Intention to Consume Alcohol?," *Adolescence* 33:129, p.47 (Spring 1998). Kelly & Edwards cited several other studies of advertising and youth drinking, including a study that found that among adolescents who had not yet begun drinking, those with heavy exposure to alcohol advertising were more likely to indicate that they plan to drink in the future (59%) than their counterparts with more limited exposure (36%). *Id.* at 48

citing Atkin, Hocking & Block (1984). Another study found that children who are more aware of alcohol advertising have increased knowledge of brands and slogans and hold more positive beliefs about drinking than other children, and an increased intention to drink as adults. *Id.* at 49 citing Grube (1993). The Kelly & Edwards study confirmed earlier studies showing that adolescents prefer image advertising more than other age groups. *Id.* at 56.

The link between increased advertising of a product and product recognition were touted by Stephen Freitas, Vice President of Marketing for Eller Media Company, in an article published in a special advertising section of *Advertising Age*. In that article, Freitas cited two studies demonstrating this link for products aimed at children:

New research is shattering the long-held opinion that outdoor measurements are too grand to take seriously. In truth, outdoor reaches the masses. In a late 1997 test, Kellogg's measured consumer awareness of an outdoor campaign for Rice Krispy Treats. In the four test markets, unaided brand awareness increased 25% as a result of the outdoor campaign.

Interestingly, the Fox Kids Network conducted research that found similar results. In a measurement of children's response to outdoor advertising, awareness of the Fox Kids Network programming rose 27% as a result of the outdoor campaign.

"Reflecting America's Changing Face," *Advertising Age*, A6, (July 20, 1998). Alcohol manufacturers spend over one billion dollars each year advertising their products. *Millennium Hangover*.

In a study of recall by school-age children of the slogans used with characters in advertisements, 221 children, aged nine to eleven, were shown popular images from television such as Tony the Tiger, Mighty Morphin' Power Rangers, Bugs Bunny, and the Budweiser Frogs. After seeing the images, the children were asked to recall the slogan associated with the pictured character and to identify the product being advertised. Eighty-one percent of the children identified beer as the product being advertised by the frogs and 73 percent recalled the slogan ("Bud-weis-er"). Laurie Leiber, "A Pilot Study to Assess Beer Commercial Recall by Children Age Nine to Eleven Years: Budweiser Frogs v. Bugs Bunny," Center on Alcohol Advertising (May 1996).

The Budweiser frogs campaign was criticized by the American Academy of Pediatrics and others as appealing to children, and called a "a phonics lesson for five-year-olds." Kilbourne, *Deadly Persuasion* (1999) at 158. One year after its introduction, the Budweiser frog campaign was the most popular commercial of all among children over the age of six. *Id.* at 159.

Another study found that alcohol advertising shapes the drinking expectations of school-age children by the time they are ten to twelve years old. Joel W. Grube and Lawrence Wallack, "Television Beer Advertising and Drinking Knowledge, Beliefs, and Intentions Among Schoolchildren," *American Journal of Public Health* 84:2, 254-259 (Feb. 1994). Grube and Wallack reported that the children in the study who were more aware of beer ads held more favorable beliefs about drinking, intended to drink more frequently as adults, and had more knowledge of beer brands and slogans. The study used fifth and sixth graders in a suburban city in Northern California.

Statistical analyses of the effects of alcohol advertising on consumption have been inconsistent. A summary of these studies and their results is included in the Ninth Special Report to the U.S. Congress on Alcohol and Health, June 1997, pages 287 to 289. Some studies have found positive associations between advertising and consumption while others have concluded that advertising affects market share and not the level of consumption. The Report explains that a finding that advertising has little or no effect on consumption is consistent with the economic theory that advertising is subject to diminishing returns such that initially the advertising will be effective but at some increased level of frequency will have little or no effect. "As a result, obtaining reliable estimates of the relationship between advertising and consumption may require data that exhibit substantial variation in the level of advertising . . ." *Id.* at 287.

Since then, a study by economist Jon P. Nelson, "Broadcast Advertising and U.S. Demand for Alcoholic Beverages," published in the 1999 *Southern Economic Journal* (65(4), 774-790), concluded that "alcohol advertising does not have a statistically significant effect on total alcohol consumption." This study, written in scientific jargon not readily accessible to the lay person, is frequently cited for the proposition that advertising does not affect consumption. The study does not, however, address underage drinking, or underage drinkers. Rather, it attempts to identify and assign values to possible variables that would effect levels of consumption such as prices, income, demographics, and advertising and, using differential equations, show that consumption is not affected by the advertising variable. Moreover, critics of Nelson's approach argue that his use of quarterly national aggregate expenditures as the measure of advertising obscures the relationship between alcohol advertising and consumption because of the high level of aggregation of the advertising data. *See* Combating Underage Drinking Initiative, "Response to 'Broadcast Advertising and U.S. Demand for Alcoholic Beverages.'"

The 1999 Roper Youth Report listed what influenced young people the most in their ideas about whether to drink alcohol. The respondents were provided the following choices: parents, teachers, peers, advertising, siblings, and television. The report found that 80 percent of eight- to twelve-year old girls and boys reported that their parents influenced them the most. Three percent of eight- to twelve-year old boys reported ads as the greatest influence, and six percent of girls. In the thirteen- to seventeen-year old group, 67 percent of the boys and 72 percent of the girls reported their parents as the greatest influence; while seven percent of the boys and five percent

of the girls reported ads as having the most influence. Eight percent of the respondents from both age groups from the western United States cited ads as the greatest influence.

The FTC has recommended, in addition to the industry's current practices, that the alcohol beverage industry voluntarily prohibit ads with substantial underage appeal, or target ads to persons twenty-five years and older. "Self-Regulation in the Alcohol Industry" (1999). The FTC also recommended that the industry voluntarily reduce underage exposure to alcohol ads by changing the current placement standards that allow advertising in media when as much as fifty percent of the audience is under twenty-one.

3. The Costs of Underage Drinking

The Pacific Institute's report on the effects of underage drinking, "Cost of Underage Drinking," shows California-specific alcohol related information. The report lists the costs of alcohol related problems such as traffic accidents and crime. The actual costs are derived from total medical costs, work loss, and pain and lost quality of life costs. In 1998, alcohol related crime involving youth in California cost \$4,531,844,000. In addition, the cost of alcohol-attributable traffic crashes involving youth for California in 1998 was \$1,784,684,300. These figures were the highest in the country.

A study by Henry Saffer of the National Bureau of Economic Research linked alcohol advertising and motor vehicle fatalities. (Saffer, Henry, "Alcohol Advertising and Motor Vehicle Fatalities," *National Bureau of Economic Research, Inc.* (April 1994).) Focusing on broadcast advertising, Saffer concluded that a ban of that advertising would save 2000 to 3000 lives per year. According to the Ninth Special Report to Congress on Alcohol and Health, the frequency of drinking and driving among adolescents has been correlated with risky driving behaviors that increase the likelihood of traffic crashes.

II. Billboard Survey

The Neighborhood Code Compliance Department conducted a survey of all billboards within the City of San Diego to determine how many billboards would be affected by the proposed advertising restrictions. The survey found that forty-seven percent of the billboards in the City would remain available for alcohol advertising, and, at the time of the survey, less than eight percent of the billboards counted were displaying ads for alcoholic beverages.

BILLBOARDS	COUNT
Billboard Structures	632
Billboard Faces	989

BILLBOARD CATEGORIES	COUNT	PERCENT
Billboards Within 1000' of Designated Sites	525	53%
Billboards Not Within 1000' of Designated Sites	464	47%
Billboards Not Within 1000' of Designated Sites But Closer Than 1000' to Residential Areas	366	37%
Billboards Not Within 1000' of Designated Sites or Residential Areas	98	10%
Billboards Advertising Beer	70	7%
Billboards Advertising Beer Within 1000' Designated Sites	37	4%
Billboards Advertising Beer Not Within 1000' of Designated Sites	33	3%
Billboards Advertising Beer Not Within 1000' of Designated Sites But Closer Than 1000' to Residential	31	3%
Billboards Advertising Beer Not Within 1000' of Designated Sites or Residential Areas	1	<1%
Billboards Advertising Alcohol Other Than Beer	4	<1%
Billboards Advertising Alcohol Other Than Beer Within 1000' of Designated Sites	2	<1%
Billboards Advertising Alcohol Other Than Beer Not Within 1000' of Designated Sites	2	<1%
Billboards Advertising Alcohol Other Than Beer Not Within 1000' of Designated Sites But Closer Than 1000' to Residential Areas	1	<1%
Billboards Advertising Alcohol Other Than Beer Not Within 1000' of Designated Sites or Residential Areas	1	<1%

The definition of “schools” contained in the draft ordinance does not include colleges and universities. If colleges and universities were added to the definition of “schools,” an additional

twelve billboards would be within 1000 feet of the designated sites and not available for alcohol advertising.

III. Legal Update

The February 18, 2000 Joint Report to this Committee discussed the legal issues raised by the proposed restrictions on outdoor advertising. The following information supplements that provided in the earlier Report.

A. *Eller Media Company and Outdoor Systems, Inc. v. City of Oakland*

This case, filed in federal district court against the City of Oakland on June 7, 1998, is pending. Per Oakland's Deputy City Attorney Mark Wald, both sides have conducted discovery and filed motions for summary judgment. Oral argument is set for October. The primary issues are the third and fourth prongs of the *Central Hudson*¹ test, *i.e.*, whether there is a reasonable fit between the City's objectives and the restrictions of the ordinance, and whether the restrictions are narrowly tailored to meet those objectives. The court has already ruled on an earlier motion for preliminary injunction that the restrictions of the ordinance directly advance the City's goal of reducing underage drinking.²

B. *Korean-American Grocers Association, et al. v. City of Los Angeles*

This case, filed in federal district court by a multitude of defendants against the City of Los Angeles on August 23, 1999, is also pending. The Court has stayed enforcement of the City's ordinance while the litigation is pending. Per Deputy City Attorney Mike Klekner, the case is still in the discovery phase. The Court has not issued any evidentiary rulings. A trial date has not been set.

C. *United States v. Playboy Entertainment Group*

Since the February 18, 2000 Joint Report to this Committee, the United States Supreme Court issued its decision in *United States v. Playboy Entertainment Group*, __U.S.__, 120 S. Ct.

¹ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 577 (1980).

²Order Granting Preliminary Injunction in Part, Denying in Part (August 28, 1998), p.12.

1878 (2000). In that case, the Court invalidated Section 505 of the Telecommunications Act as an unconstitutional restriction on free speech. Congress enacted Section 505 to protect children from viewing partially scrambled sexually explicit channels. Section 505 places substantial restrictions on the hours for transmission of sexually explicit programming even where that transmission is scrambled for non-subscribers.

The Court held that the evidence presented by the government in support of the restrictions was not sufficient to pass the *Central Hudson* test. The largely anecdotal evidence offered by the government provided “no proof as to how likely any child is to view a discernable explicit image, and no proof of the duration of the bleed or the quality of the sound.” *Id.* At 710.

Further, by imposing an outright ban on transmissions, the Court ruled that the government failed to narrowly tailor its statute so that it did no more than was necessary. *Id.* at 707. A targeted block instead of an outright ban would have been a “feasible and effective means of furthering its compelling interests.” *Id.*

By contrast, the billboards that will be restricted by the proposed ordinance are located outdoors, near places frequented by children, and are designed to be viewed from the public rights-of-way. The proposed restrictions do not ban alcohol advertising on billboards, but merely limit it near sites attended by children, leaving almost half of all billboards available for alcohol advertising.

CONCLUSION

Since the Public Safety and Neighborhood Services Committee last considered this matter, the Manager and the City Attorney have conducted hearings, gathered research, and surveyed billboards, all pertaining to the proposed ordinance. The testimony recorded at the public hearings demonstrates the community’s strong interest in this ordinance both as a piece of a broader approach to reducing underage drinking and as a restriction on the rights of advertisers, manufacturers, and retailers to convey a commercial message. The billboard survey shows that more than half of the billboards in the City would be affected by the ordinance, with forty-seven percent continuing to be available for alcohol advertising. Accordingly, under the current proposal, advertisers would continue to have ample opportunities for displaying alcohol advertising on billboards in San Diego, albeit in areas where children are less likely to congregate.

Respectfully submitted,

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Appendices:

- Appendix A: Proposed Ordinance
- Appendix B: Citations for Findings for Ordinance
- Appendix C: Speakers at Public Hearings
- Appendix D: List of Research Studies and Articles

CLG:ms
RC-2000-8